

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

MELISSA YOUNG)	
Claimant)	
VS.)	
)	Docket No. 248,308
TAYLOR OIL, INC.)	
Respondent)	
AND)	
)	
FEDERATED MUTUAL)	
Insurance Carrier)	

ORDER

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Brad E. Avery on May 24, 2000.

ISSUES

In the appealed Order, the Administrative Law Judge ordered respondent to pay temporary total disability benefits from October 19, 1999, to February 1, 2000, and provide medical treatment with Dr. Smith until claimant reaches maximum medical improvement.

Respondent's application for review describes the issue on appeal as follows:

Whether the Court exceeded his authority by granting temporary total disability to the claimant between October 19, 1999 and February 1, 2000 where there is no medical evidence to support said claim. The Court's finding was made in the absence of any medical documentation supporting the same.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes the appeal does not raise a jurisdictional issue and should be dismissed.

In appeals from preliminary hearing orders, the Board's jurisdiction is limited to review of allegations that the ALJ exceeded his/her jurisdiction. K.S.A. 44-551. K.S.A. 44-

534a states that jurisdictional issues should include whether claimant suffered accidental injury, whether the injury arose out of and in the course of claimant's employment, whether claimant gave timely notice, whether claimant made timely written claim, and whether certain defenses apply.

In this case, respondent argues the ALJ ignored uncontroverted evidence that claimant was not totally disabled during the period for which the ALJ ordered respondent to pay temporary total disability benefits. Claimant argues, and the Board agrees, the issue raised in this appeal is not a jurisdictional issue. The appeal should, therefore, be dismissed.

Claimant's request for an award of attorney fees under K.S.A. 44-536a(d) is denied.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the appeal of the Order entered by Administrative Law Judge Brad E. Avery on May 24, 2000, should be, and the same is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of July 2000.

BOARD MEMBER

c: Roger D. Fincher, Topeka, KS
Kip A. Kubin, Overland Park, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director